Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

AWH CORPORATION,
HOPEMAN BROTHERS, INC., and
LOFTON CORPORATION,

Petitioners,

v.

EDWARD H. PHILLIPS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Federal Circuit is correct in holding that all aspects of a district court's patent claim construction may be reviewed *de novo* on appeal.

RULE 14.1(b) AND 29.6 STATEMENT

Pursuant to Supreme Court Rule 14.1(b), Petitioners AWH Corporation, Hopeman Brothers, Inc., and Lofton Corporation (collectively "AWH") state that all parties to the proceedings below appear in the caption of the case on the cover page.

Pursuant to Supreme Court Rule 29.6, Petitioners state that AWH Corporation is the parent corporation and sole owner of Hopeman Brothers, Inc. and Lofton Corporation. No publicly traded company owns 10 percent or more of AWH Corporation.

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OPINIONS BELOW

The majority, concurring and dissenting opinions of the *en banc* court of appeals are reported at 415 F.3d 1303. *See* App. at 1-63. The majority and dissenting opinions of the panel of the court of appeals are reported at 363 F.3d 1207. *See* App. at 64-84. The order of the court of appeals granting rehearing *en banc* and inviting briefing from the parties and from *amici curiae* on particular issues was entered on July 21, 2004 and is unpublished. *See* App. at 137-42. The opinion of the district court granting summary judgment in favor of petitioners was entered on January 22, 2003, and is unpublished. *See* App. at 134-37. The order of the district court on claim construction was entered on November 22, 2002, and is also unpublished. *See* App. at 89-133.

JURISDICTION

The jurisdiction of the district court was invoked under 28 U.S.C. § 1331 and § 1338(a). The jurisdiction of the court of appeals was invoked under 28 U.S.C. § 1295(a)(1). On April 8, 2004, a panel of the court of appeals issued its judgment. On July 21, 2004, the court of appeals ordered an *en banc* rehearing of the appeal. *See* App. at 137-42. The court of appeals issued its *en banc* judgment on July 12, 2005. On September 29, 2005, Justice Breyer extended the time within which to petition for a writ of certiorari to and including November 9, 2005. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RULE INVOLVED

The rule at issue is Federal Rule of Civil Procedure 52(a), which provides:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. * * *

STATEMENT OF THE CASE

This patent infringement case arises out of Respondent Phillips' '798 patent, which contains claims directed to building modules used in the construction of secured facilities such as prisons. Phillips initiated this lawsuit in February 1997, accusing Petitioners ("AWH") of infringing certain claims of the '798 patent in seven jail construction projects in which AWH participated between 1990 and 1996.

A. The District Court Proceedings

The proceedings to date in the district court have focused on the parties' dispute over the construction of certain terms used in the relevant claims of the Phillips

'798 patent. The term "baffles" has been of particular significance because it appears in all of the claims asserted against AWH. The relevant language from Claim 1 of the '798 patent is illustrative:

> Building modules adapted to fit together for construction of fire, sound and impact resistant security barriers and rooms for use in securing records and persons, comprising in combination, an outer shell of substantially parallelepiped shaped with two outer steel plate panel sections . . . serving as inner and outer walls for a structure when a plurality of the modules are fitted together, . . . and further means disposed inside the shell for increasing its load bearing capacity comprising *inner steel baffles extending inwardly from the steel shell walls.*

In the district court, AWH asserted that the '798 patent uses the term "baffle" to describe an intermediate, interlocking barrier to deflect bullets, projectiles or bomb fragments. That type of use requires the baffles to be disposed within the wall shell at an angle other than 90° to the wall face. Phillips responded that, while the various embodiments disclosed in the patent drawings and written specification all describe angled baffles, the literal claim language does not require the baffles to be so disposed. Both parties agreed that resolving the claim construction dispute in favor of AWH would end the case, because the steel support studs in the modules constructed by AWH were disposed at 90° to the wall faces and did not form an intermediate barrier.

To resolve the parties' dispute, the court held a hearing in accordance with *Markman* v. *Westview Instruments,*

Inc., 517 U.S. 370 (1996), to receive evidence relevant to construing the patent claims at issue. At the hearing, the district court received testimony regarding the disputed claim terms, including "baffles," from the inventor, Phillips, and from two expert witnesses, one for each party. The testimony focused on both the state of the art at the time of the Phillips invention and the industry use of similar terms. The court also received intrinsic and extrinsic documentary evidence including the patent, the file wrapper, photographs of prior art, samples of certain embodiments of the '798 patent, and excerpts from various uniform building codes. Before the court[1] issued its order on claim construction, it also received additional exhibits submitted in connection with the parties' summary judgment briefing that included other extrinsic evidence.

Ultimately, the district court ruled for AWH. The court began its analysis of the construction of the term "baffle" with the dictionary definition of "baffle" as "a means for obstructing, impeding or checking the flow of something." The court then reviewed the '798 patent's specification and prosecution history, as well as the prior art, and found that "[t]he things that are uniquely restricted or obstructed in [the '798 patent] are heat, bullets and bomb fragments." Based on that factual finding, the court determined that, as used in the '798 patent, a "baffle" has two attributes: "A 'baffle' extends inward from the steel shell walls *at an oblique or acute angle to the wall face* and it forms, with

[1] Judge Edward Nottingham presided over the initial *Markman* hearing. After the hearing, but before an order on claim construction was issued, the case was transferred to Judge Marcia Krieger. Judge Krieger then reviewed the transcript and files from the hearing and issued the order on claim construction in November 2002. App. at 90-91.